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R E G E N T
CONSTITUTIONALLY CONSIDERED.

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W H E N a question of high importance is about to be agitated in the national assembly of this country, it is not the least flattering privilege of the humblest member of the community, to be entitled to deliver his opinions on the subject, through the medium of the press, without encountering the stigma of presumption, or the imputation of unnecessary zeal. And, perhaps, when the coldness of reserve is dissolved, and when the spirits of the grave are on fire, the individual, who shares the interest and partakes the animation, un-

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supported by the dignity of situation, or the captivation of rhetorical accomplishments, may be praised for his attempt, though he should fail of applause for his actual exertions.

Perhaps too it may be admitted, that far inferior ability, removed from the theatre of action, and amidst the calmness of the closet, may reason with stricter accuracy, and pronounce with cooler decision, than the senator, whose passions are inflamed, and whose feelings are interested; who is cheated by the charms of elocution, and deceived by the semblance of conviction. And the observation is strongly supported, if we subjoin, that the degree of self-possession is considerably extended by the absence of hope and fear, of apprehension and expectation.

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At all events, the author of the following pages is persuaded, he may confide in the candour of his countrymen ; and that, if they cannot subscribe to his doctrines, they will, at least, admit, from the internal evidence they possess, that they were neither dictated by the blindness of prejudice, nor conceived by the phrenzy of faction.

The question which, at present, agitates the minds of men, both within and without the walls of parliament, relates to the prerogatives which may and ought to be exercised by the Regent; who, during the interval of the imbecillity of the executive branch of the constitution, is substituted to supply the chasm, so unfortunately created, for an uncertain and undefinable period. And this general question has been reduced to a more particular propo-

tion—Whether the prerogative, or the power of creating peers and dissolving parliament, may and ought to be committed to the discretion of the Regent.

In investigating a legal, as well as a constitutional right, a reference is naturally and necessarily made to the practice and decisions of former judges and legislators. We are ready to acknowledge, for the sake of uniformity and correctness, and from the admitted obligation, the compulsive effect, as well as the propriety of their determinations. But, before we assume them for our guides, we ought to be satisfied, that the facts upon which they were founded are accurately the same with the facts of the present question; that the powers and the interests of the persons who then acted, were, intrinsically, as well as nominally, the same,

same, with those of the persons who are now to act; and that the parties, whose rights are to be decided upon, are precisely in the same predicament with those whose rights were, in the former instance, pronounced and ascertained.

If these are admitted to be the just and the only grounds, upon which a precedent can be supported, as a rule of decision; I do not scruple to assert, and to maintain, that there is not a single instance in the annals of this country, which can be fairly and correctly cited as a fair and correct precedent, on the present interesting emergence,

The case of the Sovereign's incapacity to govern, at a period when there was not only a Prince of Wales existing, but a Prince of Wales of full age, and capable
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of assuming the conduct of the state, has in no instance occurred. In one instance, only, have two of the corresponding circumstances been united; I mean the incapacity of the King, and the existence of the Prince. But as the Prince was then an infant of six months old; unprovided with friends to maintain his right, and at once divested of paternal and popular protection; we ought not to conclude that the contingent authority reserved to him, was the whole that ought to have been reserved; but rather to express our astonishment that his interests were in any degree considered, or his claims in any degree provided for.

In the year 1454, in consequence of the incapacity of Henry the Sixth, the Duke of York was appointed Protector of the Realm, Defender of the Church, and
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first Counsellor to the King ; with a limitation that these powers should cease when the Prince of Wales should attain his full age of twenty-one years. The authority, however, thus immediately vested in the Duke, and contingently in the Prince, was, as it appears upon an accurate inspection, contracted, with respect to both, considerably within the limits of the regal prerogatives. But should it be contended, that the prerogatives reserved for the Prince, in that instance, afford the exact proportion of those which ought to be vested in the Prince, as Regent, in the present emergency ; I answer, that the instance is defective in the first test of a governing precedent ; *that the facts are different* ; and that it is extremely probable, if the Prince had been of age, and capable of receiving the powers of a Regent at the instant, that
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such powers would have been infinitely more transcendent, than those which he actually received by reflection from the Duke of York, the rival of his family, and the almost avowed pretender to his father's crown.

But should the *facts* be even admitted, as supporting the parallel ; it is necessary to ask, in the second instance, *whether the powers and interests of the persons who so decreed*, I mean the two houses of Parliament, were the same as those of the two houses who are now sitting at Westminster ? And this question may, perhaps, be most completely answered, by a further series of inquiries. Was the importance of the Peers restrained within its just and equitable limits ? Were the privileges of the Commons established, or understood ? Were the prerogatives of the execu-

tive magistrate defined and ascertained? On the contrary, were not the two first branches of the legislature involved in mutual disputes, and distracted with reciprocal jealousies? And, in that state of perpetual incroachment and hostility, are we able to descry a vestige of concord, except their unanimous contempt for the representatives of the people? Accurate is the delineation of our great poet, when a peer, accused by the Commons of a most heinous offence, observes to the King :

“ 'Tis like the Commons, rude unpolish'd hinds

“ Should send such message to their Sovereign.”

Amidst such a scene of discord and confusion, no one will pretend to discern the harmony of component parts, the just balance of contravening interests, and, above all, the pervading spirit of general independence and particular support which has

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mass, and has since constructed the con-
stitution of Britain.

If we reflect for a moment on the complexion of the times, and the circumstances which distinguished the event, we may venture to describe, in a few words, the leading features of the transaction. The Duke of York, impelled to a more speedy assertion of his claim to the crown, by the birth of an heir to Henry the Sixth, seized in the first instance, by a lawless act of violence, the person of the Duke of Somerset, the favourite of the Queen, and the minister of the kingdom. By the prevalence of a prevailing faction in the aristocracy, which then governed the state, and in consequence of the King's presumed or actual incapacity, he then secured to himself the protectorate of the realm,
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under certain plausible restrictions, which he afterwards limited to the Prince of Wales, as a cloak to darker designs, which were suppressed as immature, and artfully disguised by loyal protestations.

Attending more closely to the subject, we may observe, that had the Prince been actually of age, *his rights* would not have been altogether untinged with considerable *peculiarities*. He was heir to a king, who was considered by a large proportion, and, probably, by the majority of his subjects, as a tyrant and an usurper; for the claim of the House of Lancaster, supported, in the first instance, by the sword, had never been recognised and legitimated by the free and unbiassed suffrage of the people.

Such is the precedent in question; such was the hasty act of a partial assembly of

tyrannical but venal Nobles, of túrbulent but enslaved Commons, ignorant of the name of the constitution, and strangers to the just prerogatives of the crown, which has been adduced as a rule to direct the deliberations, and to determine the conduct of their free and enlightened descendants !

If this precedent had applied in all its points, were those who argued from it, aware of the inconveniences and absurdities, which would of necessity have attended its adoption ? If it had prevailed at all, it must have prevailed in all its parts ; and it would surely have afforded a most extraordinary spectacle, had the maxims and policy of the reign of Henry the Sixth been applied, or rather wrested, to the principles of government acknowledged

ledged in this country at the end of the eighteenth century.

The only precedent which can, with any degree of plausibility, be considered as applying to the present question having been justly abandoned; before I proceed to consider the principles by which it must actually be governed, it may be proper, perhaps, to allude, in a single sentence, to the arguments which may be adduced from the various regencies, or councils of regency, which, during the *minorities* of our kings, have been successively established by Parliament.

A sentence, indeed, is all that can here be necessary; for I have only to observe, that the consequence of a Regent, during the imbecillity of the Sovereign, is completely to be distinguished from that of

the same magistrate during a minority : it is ridiculous, in fact, to attempt a comparison between them. In the latter instance, a pageant of royalty was still held forth, and, in many cases, the acts of the Regent, in the performance of the executive functions, were considered as merely secondary and ministerial : whilst, upon other occasions the King conferred a legal sanction, not only by the use of his name, but by the formality of his act. By referring to the last minority this country has experienced, I mean that of Edward the Sixth, we may discover a variety of instances in affirmance of these observations. Parliaments were assembled and dissolved ; peers were created, and all the functions of the crown as completely performed, as they possibly could have been, had the King himself possessed the capacity of executing,

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in the fullest extent; the prerogatives of sovereignty.

Being thus compelled to relinquish every hope of obtaining assistance from arguments *a priori*; and being thus convinced, that the historic memorials of our country may tend to confound, but can never contribute to inform; it is our business to discover and decide whether the powers of a Regent are to be adjusted by the discretion of the two existing branches of the legislature, or whether that discretion is to be directed and controlled by constitutional principles, and constitutional necessity.

As the foundation for this inquiry I shall assert, what will, probably, not be contradicted, that the people at large are completely conscious of the blessings and conveniences which are derived from the peculiar

peculiar organization of the machine, which is properly styled the Constitution; that the wisdom of its construction is as generally admired as the felicity of its effects; and that, however capricious we may be considered, with respect to lighter subjects, and less important institutions, we are unanimous, at least, in revering this wonderful monument of human genius and human perseverance.

The rough outline of the plan may be traced through a series of successive ages; but it is within a period comparatively short, that the edifice has been displayed in its regular proportions, and finished symmetry: or, in other words, that it is from the æra of the Revolution that we date the settlement of the constitution; and that, consequently, when we de-
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scribe it, we speak of it in the sense in which at that period it was recognized and defined.

As its existence depended upon the existence of three distinct powers, differently vested, and endued with different privileges and prerogatives, it is a necessary conclusion, that if one of those powers be abrogated, or in any manner deprived of its ability to act, the general functions of those which survive are of necessity impeded, and must remain suspended till the vacancy be supplied.

But how, it will be asked, is this necessary measure to be effected? From whose hands is the power to be supplied, from which alone we can expect the restoration of the forms and a renovation of the energy of govern-

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ment? To this I answer, from the hands of the surviving constitutional branches, with the consent and acquiescence of the people.

In support of this proposition, it is almost impossible to adduce arguments more convincing, or more forcibly and judiciously impressed, than those delivered by our ancestors upon a former occasion, when a Prince had forfeited his title to reign by his unworthiness ; and when, in consequence of his abdication, the powers of the executive branch were suspended, and the connection of the constitution dissolved. And though I admit that those opinions are the mere dicta of individuals, assembled (undoubtedly upon very questionable authority) for the purpose of restoring the defective political machine, yet I shall insist that they are entitled to
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reverence and respect ; because, in the first place, they are the highest authorities to which we can refer in the absence of positive law ; and because, in the second place, they appear to have been the result of the most consummate prudence, and the most active industry.

Those arguments may perhaps be properly arranged in the following order: To prevent the confusion which must have necessarily attended the demise of the Crown, had the place of the executive magistrate continued unsupplied, our ancestors very wisely decreed, that the sovereignty should be considered as hereditary, and that the heir should instantly be seated on the vacant throne of his progenitor, by the effect of a fundamental law, coeval with the date of our constitution. Two instances, however, might exist in which

the provision was insufficient, and the rule inadequate; the total extinction of the royal family, and the abdication or forfeiture of the king. In either of those cases, it was unequivocally asserted in the Convention Parliament, with the boldness as well as the sincerity of conviction, that in those instances the Lords and Commons, being the representative body of the kingdom, and the only remaining apparent parts of the government, were to supply the defect, by providing a successor, and restoring the operation of the executive power.

These were the positions, such were the “*responfa prudentum*,” upon which the principle of the Revolution was supported, defended, and justified. And when we contemplate them with an accurate and impartial retrospection, we are compelled to confess, that they wear not the appearance

ance of political fanaticism, or enthusiastic speculation. Far different from the doctrines of modern innovators, they were the dogmas of sound sense contending for order, and of acute penetration, that honourably seized the moment of deliverance.

If such was admitted to be the constitutional mode of supplying a constitutional deficiency, when the throne was actually vacant, we may fairly, I trust, conclude, that such also is the mode by which a temporary inability of the Sovereign is to be remedied and provided for. Admitting the former position (and who at this day will deny it?) the latter assumes a form at once unimpeachable and plain. Presuming, therefore, that the two Houses of Parliament, assembled in national convention, are the true and only powers that are entitled

entitled to apply a remedy to the present defect, I shall now proceed to inquire whether they are competent to limit or restrain the authority of a Regent, within the just and usual extent of the regal prerogative; and particularly, whether he can, constitutionally, be deprived of the powers of creating peers, and of dissolving parliament.

To these inquiries, I answer, NO. And these are the reasons I assign in support of so unequivocal and so unqualified a negative.

Let us first examine, for a moment, whether the light of jurisprudence will contribute to illustrate the argument. It is laid down as a clear position, "that those persons are to be considered as temporary monarchs, who, during the minority

rity of kings, or in the time of their incapacity or lunacy, are appointed protectors." If such be the rule, the conclusion naturally follows, that such temporary and substituted monarchs must possess the same rights, and enjoy the same prerogatives, as those for whom they were substituted possessed and enjoyed during the time they retained the capacity of governing.

Another argument may perhaps be deduced, from the nature and operation of a trust. If the effect and intention of a trust be clearly and accurately defined, the court to which such cognizance belongs, will, in case of the death, the incapacity, or the dereliction of the trustees, nominate such persons as shall be deemed most unexceptionable, to carry the trust into execution, and to accomplish the purpose for which it was created ; but that purpose cannot, in

the minutest instance, be varied, nor can the powers of the new trustees be confined or extended, in the most trivial degree, within or beyond the powers of those whose place they supply, or whose duties they fulfil. And such should seem to be the rule with respect to the highest of all trusts, that, I mean, which is vested by the constitution in the hands of the executive magistrate.

But it is not upon such grounds that I intend to risque the fate of my assertion; on the contrary, I shall try it by the only rule by which it can be governed or affected, the rule which is derived from constitutional necessity. And here I shall contend, that the right which has so attached to the two Houses of Parliament, is strictly confined to the providing for the defect which has occurred by an immediate

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diate substitution ; that in consequence of that substitution, every right and every prerogative, of which the place of the person represented was susceptible, instantly and *ipso facto* vests in the person substituted : and that, if the constituting body exceed the limits of their authority by confining those rights, they will seek in vain for constitutional precedent or protection.

It has been justly observed, that the two Houses, in their present separate state, are unequal to the task of providing for the most trifling subject of public convenience or police : and is it possible then to assert, that, in such a state of complete incompetency, they can be justified in political acts of so extraordinary a magnitude, and so decisive a nature, as barricading the avenues of one House, and

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insuring the existence of the other, by possibility at least, to the period of its natural dissolution?

But presuming, for a moment, that the representatives of the nation are not prohibited *in limine*, from exercising their discretion on the power to be bestowed; will they not be presented with as strict a prohibition the moment the question is fairly agitated and maturely considered? If the spirit of the constitution permit them to slumber, will they not be awakened, with redoubled horror, in the first moments of repose? If the constitution enable them to exercise a right, will it not oblige them, at the same time, to exercise it with such moderation, as to preserve inviolate the various dependencies and relations, the essence and meaning of its own original establishment?

Experience

Experience has taught us, that the existence of the constitution, and of all the advantages of which it is productive, may be referred to the nice balance and accurate estimation of the powers, and the importance of the respective branches of which it is composed. The adjusting the due proportion of political effect, to which they are severally intitled, has been the work of slow investigation and mature decision. The arrangement of privilege and prerogative, in the opinion of the most judicious observers, has at length, in a great degree, been happily accomplished. Can the constitution then be presumed to vest an authority in two of its component parts, to destroy itself, by destroying the equilibrium by which it is maintained?

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that the rights in question, the power of creating peers, and of dissolving parliament, may be suspended for a time, and placed, as it were, in a state of abeyance. To this I answer, that if those powers be subtracted from the executive branch, they must instantly be annexed, in substance, to the opposite power. That, in proportion to the decrease of the influence of the Crown, we must estimate the augmentation of the consequence of the representative body. And that, by a measure similar to that in contemplation, the balance of the government may be so completely subverted, as to leave us, in fact, at the mercy of an aristocracy, composed of a majority of both Houses of Parliament, who will be equally insured, for no inconsiderable period, from the consequences of dissolution or controul.

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Here, then, I rest the stress of my argument, and assert, that the power of the Regent must be co-extensive with the power of the Crown; because, in the first place, the authority which confers it is confined to a naked substitution; and because, in the second place, the same authority, if it possessed the right of discretion, would be circumscribed in its intended operations by the intervention of constitutional necessity.

It remains for me to answer two objections, which may, probably, be adduced in opposition to the principles which I have here endeavoured to maintain. It may be said, perhaps, that at the period of the Revolution the Convention conceived itself intitled to confine the ancient power of the Crown, as well as to place it on the head of King William; and that
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it actually effected its intention. To this I reply, that the throne was then absolutely vacant ; that the balance of the Constitution had palpably inclined in favour of the prerogative ; and that the representative body grasped at the opportunity to restore it to its proper poise. How different is that instance from the present ! And, to mark it more strongly, let me inquire what would have been the reception of the two propositions in question, had they been agitated during the last sessions of Parliament ? And yet, in my apprehension, they would, in that instance, have been equally intitled to the sanction of constitutional propriety.

It may be also asserted, that the power that bestows, must of necessity be invested with the right to modify the gift, and to limit its operation and effect. An

answer to this objection has been already substantially given. The power of bestowing, in this instance, is confined to the substitution merely, the supply of a vacant situation : but, if the rights annexed to that situation are increased or diminished, the act of substitution, instead of supporting the system so long established, and generally approved, must have the effect of subverting and confounding it.

Such are the ideas I have thrown together, with a degree of haste indeed, which the immediate nature of the question appeared to require, on the constitutional propriety of confining the power of a Regent. And I confess I feel the completest conviction, that it is unjustifiable in principle, and may be dangerous if carried into effect. Were the particular consequences

quences entirely to be disregarded, the example would be sufficient to stamp the measure with reprobation; at a juncture like the present, it would be peculiarly injudicious to distort a constitutional principle; it would be worse than injudicious, directly to infringe it.

With respect to the arguments deduced on the other side, from actual or presumed expediency, I shall be silent, because I am ignorant of the facts from whence they are derived. The expediency so much relied upon, whatever it may be, whether applicable to the interests of the nation at large, or to those of a particular set of men, I shall ever contend must be governed by an antecedent and far more important necessity. Should a Regent be deprived of any of the functions
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of the Crown ; I do not hesitate to assert, that we rend from the Sovereign, during his incapacity to reign (the melancholy occasion of which, as a man, I lament, and as a subject, I refer to with proper decorum), an important proportion of his fair and constitutional influence, and of his just and constitutional prerogative.

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